BLANK
PAGE

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 17 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 593

KOEHRING COMPANY, PETITIONER

v.

HYDE CONSTRUCTION COMPANY, INC., RESPONDENT

and

KOEHRING COMPANY, PETITIONER

v.

VARDAMAN S. DUNN, RESPONDENT

BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO AMEND ORDER OF REMAND

STEVEN E. KEANE
JAMES P. BRODY
735 North Water Street
Milwaukee, Wisconsin

WILLIAM A. DENNY
1701 W. Wisconsin Avenue
Milwaukee, Wisconsin

Attorneys for Petitioner

HAMMERSMITH-KORTHEYER CO. MILWAUKEE

BLANK
PAGE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 593

KOEHRING COMPANY, PETITIONER

v.

HYDE CONSTRUCTION COMPANY, INC., RESPONDENT

and

KOEHRING COMPANY, PETITIONER

v.

VARDAMAN S. DUNN, RESPONDENT

BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO AMEND ORDER OF REMAND

Respondents, Hyde Construction Company, Inc. and Vardaman S. Dunn, have filed a document with this Court entitled "Petition for Rehearing and Motion to Amend Order of Remand." Although the document seems to be principally a petition for rehearing and the Supreme Court Rules do not provide for briefs in response thereto, Koehring felt it necessary to respond in the event this Court might to some extent consider it a motion.

Respondents' sole argument here is that the United States Court of Appeals for the Tenth Circuit decided only one of the issues which were before it, leaving the remaining issues unanswered. Their motion and petition are entirely dependent on that proposition.

That proposition is not correct. The Court of Appeals clearly intended to, and did, decide all the issues before it. It reviewed the *entire* order:

> "Since the injunction is inseparable from the contempt orders, whose validity in turn depends upon the jurisdiction of the lower court, this court may and will review the entire order of September 1, 1964." [1]

After deciding the jurisdictional issue in favor of Respondents, the Court of Appeals went on to say:

> "The injunction and the contempt judgments are vacated and the cases are remanded for proceedings consistent with this opinion. *Other contentions made on these appeals are either not properly before this court or are found to be without merit.*" (Emphasis supplied) [2]

The Court of Appeals had devoted a considerable portion of its opinion to the jurisdictional question. Clearly, when it went on to discuss "other contentions", it was not discussing contentions on the subject of jurisdiction.

---

[1] Appendix B, Petition for Writ of Certiorari, P. 24; *Hyde Construction Company, Inc. v. Koehring Company* (C.A. 10, 1965), 348 F. 2d 643, 647.

[2] Appendix B, Petition for Writ of Certiorari, P. 27; *Hyde Construction Company, Inc. v. Koehring Company* (C.A. 10, 1965), 348 F. 2d 643, 649.

Respondents Hyde and Dunn have misleadingly paraphrased the opinion to suggest that the plain language "other contentions" means the *same* contentions.[3] The Court of Appeals clearly disposed of all contentions, both jurisdictional and "other". Respondents appear to forget that it was they as *appellants* who were making the contentions before the Court of Appeals.

Respondents Hyde and Dunn have also gone beyond the boundaries of proper appellate procedure by not limiting their argument to the record before this court and by insinuating that there are facts outside that record which would somehow establish that Hyde and Dunn did not proceed in disregard of a Court order, and that this would affect the ruling of the Court. Limiting ourselves to the record, the insinuation is amply rebutted by the finding of the District Court for the Northern District of Oklahoma, with all the facts before it, that Respondents had contemptuously disregarded its order.

Respectfully submitted,

STEVEN E. KEANE
JAMES P. BRODY
735 North Water Street
Milwaukee, Wisconsin

WILLIAM A. DENNY
1701 W. Wisconsin Avenue
Milwaukee, Wisconsin
Attorneys for Petitioner

Dated February 16, 1966

---

[3] "Since the Court of Appeals decided that the judgment was void for want of jurisdiction, it concluded that other contentions were not properly before it and no decision was made thereon. Those contentions of the Koehring Company contrary to the jurisdictional issue were found to be without merit. * * *" (Respondent's Petition and Motion, P. 4)